

5 October 1988  
OCA 3340-88

MEMORANDUM FOR: DDA  
General Counsel  
Comptroller  
D/OL  
NIO/Narcotics  
[redacted]  
DGC/IO/OGC  
DGC/AS/OGC  
C/L&PLD/OGC

OCA FILE Leg

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FROM: [redacted] Legislation Division  
Office of Congressional Affairs

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SUBJECT: Senate Bipartisan Drug Bill - S. 2852

1. On 3 October 1988, the Senate bipartisan omnibus, anti-drug bill was introduced: S. 2852, the "Omnibus Anti-Substance Abuse Act of 1988." Copies of the bill and its accompanying section-by-section analysis are attached.

2. The Senate would like to take up S. 2852 as soon as possible. Consideration remains stalled, however, over the procedures for scheduling controversial amendments (e.g., death penalty). As of this date, no resolution has been reached. The situation is very fluid, however, and events could move very quickly if the impasse is broken.

3. Provisions of interest are discussed as follows.

#### Drug Czar

4. S. 2852's drug czar provisions are found in Sections 1001 - 1015. The S. 2852 czar, styled the "Director of National Drug Control Policy" (D/NDCP), is given Cabinet rank and made a member of the National Security Council. The Central Intelligence Agency and all agencies of the Intelligence Community are denominated as "National Drug Control Program agencies", thereby bringing them under the bill's jurisdiction.

5. The D/NDCP is responsible for preparing the National Drug Control Strategy. He is to assign roles for each agency under the Strategy and may direct them to comply, subject to a right of appeal to the President. He is to "direct and coordinate" drug

supply reduction efforts, including intelligence. He is also to prepare the "(C)onsolidated National Drug Control Program (B)udget" and present it to the President for submission to Congress.

6. Budget Authorities. The D/NDCP prepares this budget by requiring each agency (down to the program manager level) with responsibilities under the Strategy to submit to him the corresponding part of its budget prior to its submission to their superiors and before its submission to the Office of Management and Budget (OMB). The D/NDCP may then approve or revise those requests. He may also reprogram funds between programs up to a five percent ceiling. Agency heads have a right of appeal to the President.

7. This statutory language, however, is conditioned by the following language in the section-by-section analysis:

This (budget) process is not, however, intended to give the Director dictatorial authority over the budgets of other agencies. Rather, the Director is instructed to develop, in consultation and cooperation with other agencies and departments, a consolidated budget that reflects and implements the priorities and policies set forth in the ... Strategy. When developing the budgets of programs included in the National Foreign Intelligence Program, the Director shall consult not only with the agency involved but with the Director of Central Intelligence as well. (emphasis added)

8. Personnel Authorities. The D/NDCP may obtain personnel from agencies only with the agency head's concurrence. However, in an effort to make service with the D/NDCP attractive, Section 1006(f) provides that detailing agencies shall give preference in promotions to their personnel previously detailed to the D/NDCP.

9. Intelligence Information Protection Provision. Section 1007(a)(2) authorizes the Director of Central Intelligence (DCI) to promulgate regulations to protect sources and methods of intelligence information provided to the D/NDCP.

10. As expected, absent from the bill is the provision in current law which protects the Director of Central Intelligence's (DCI) special authorities vis a vis the Drug Policy Board.

11. The Drug Policy Board (National Drug Enforcement Policy Board) is terminated. On the other hand, there is a five year "sunset" provision for the D/NDCP itself, i.e., all of the provisions of the bill related to "drug czar" expire five years after enactment and would have to be specifically reenacted in order to remain effective thereafter.

### R&D Facilities

12. Section 2989 of the bill carries over intact the provisions of Section 4501 of an earlier draft of the Senate bill. This section denominates Central Intelligence Agency and National Security Agency research and development (R&D) facilities as being part of a group of federal R&D facilities to be included in a plan to assist federal anti-drug law enforcement efforts. It also gives the General Accounting Office (GAO) oversight of the process. We are working with the Administration to address our concerns with the provision.

### Other Provisions

13. The foreign affairs provisions of the House-passed bill, H.R. 5210, were incorporated into S. 2852 (Title IV). The drug-free workplace provisions of H.R. 5210 were also incorporated with a modification relating to law enforcement activities (Sections 5201-09). Also included are various miscellaneous law enforcement amendments (Sections 2601 - 2765). Of particular interest in this regard are amendments relating to use of pen registers for law enforcement purposes (Section 2696) and the admission by the Department of Justice to permanent residence of fifty aliens per year in connection with the Alien Witness Cooperation Program (Section 2756). Also of interest is an amendment to the Federal Rules of Criminal Procedure relating to the manner in which the "public authority" defense is claimed by criminal defendants in matters involving intelligence agencies (Section 2757).

14. Please contact us if you have any questions.

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Attachments  
As stated

OCA/LEG/ [redacted] (27 September 1988)

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#### Distribution:

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1 - D/OCA

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1 - [redacted] Signer

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October 3, 1988

## CONGRESSIONAL RECORD — SENATE

S 14115

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BURDICK, from the Committee on Environment and Public Works, without amendment:

S. 2853. An original bill to amend the Safe Drinking Water Act and the Federal Insecticide, Fungicide and Rodenticide Act to protect ground water resources from contamination by pesticides, to transfer the liability for pesticide damages in certain circumstances from the user to the registrant, and to preserve the authority of State governments to establish standards for pesticide residues in food (Rept. No. 100-583).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 2746. A bill to amend the Federal Aviation Act of 1958 relating to aviation research (Rept. No. 100-584).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 2777. A bill to authorize a certificate of documentation for the vessel Gipsy (Rept. No. 100-585).

H.R. 2032. A bill to authorize the conveyance of the Liberty ship PROTECTOR (Rept. No. 100-586).

By Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, without amendment:

H.R. 2835. A bill to direct the Secretary of Agriculture to release certain restrictions on a parcel of land located in Henderson, Tennessee.

By Mr. BURDICK, from the Committee on Environment and Public Works, without amendment:

H.R. 4365. A bill to designate the Sunderland National Salmon Station located in Sunderland, Massachusetts, as the "Richard Cronin National Salmon Station".

By Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, with an amendment in the nature of a substitute:

S. 2437. A bill to direct the Secretary of Agriculture to release a reversionary interest of the United States in certain land located in Oktibbeha County, Mississippi.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. NUNN (for himself, Mr. BYRD, Mr. DOLE, Mr. MOYNIHAN, Mr. RUDMAN, Mr. D'AMATO, Mr. WILSON, Mr. GRAMM, Mr. FOWLER, Mr. BUMPERS, Mr. MURKOWSKI, Mr. TRIBLE, Mr. THURMOND, Mr. GRAHAM, Mr. LAUTENBERG, Mr. CHILES, Mr. DECONCINI, Mr. DIXON, Mr. BENTSEN, Mr. BINGAMAN, Mr. EXON, Mr. SASSER, Mr. ROTH, Mr. RIEGLE, Mr. BREAUX, Mr. SPECTER, Mr. CONRAD, Mr. GORE, Mr. DASCHLE, Mr. HOLLINGS, Mr. METZENBAUM, Mr. QUAYLE, Mr. BOSCHWITZ, Mr. CHAFEE, Mr. COCHRAN, Mr. DOMENICI, Mr. GRASSLEY, Mr. HATCH, Mr. HEINZ, Mr. KARNES, Mr. MCCONNELL, Mr. PACKWOOD, Mr. PRESSLER, Mr. SIMPSON, and Mr. STEVENS):

S. 2852. A bill to provide for an omnibus Federal, State, and local effort against substance abuse, to provide for a cabinet-level position to centralize and streamline Federal activities with respect to both drug supply—(interdiction and law enforce-

ment)—and drug demand (prevention, education, and treatment), to expand Federal support to ensure a long-term commitment of resources and personnel for substance abuse education, treatment, and rehabilitation efforts, to strengthen and improve the enforcement of Federal drug laws and enhance the interdiction of illicit drug shipments, and for other purposes; placed on the calendar.

By Mr. BURDICK from the Committee on Environment and Public Works:

S. 2853. An original bill to amend the Safe Drinking Water Act and the Federal Insecticide, Fungicide and Rodenticide Act to protect ground water resources from contamination by pesticides, to transfer the liability for pesticide damages in certain circumstances from the user to the registrant, and to preserve the authority of State governments to establish standards for pesticide residues in food; placed on the calendar.

By Mr. HATFIELD:

S. 2854. A bill to authorize the Environmental Protection Agency to take certain action to protect the environment; to mitigate water pollution; to reduce solid waste and the cost in connection with the disposal of such waste through recycling; and for other purposes; to the Commission on Commerce, Science, and Transportation.

By Mr. HEINZ:

S. 2855. A bill to designate Lock and Dam 7 on the Monongahela River in the Commonwealth of Pennsylvania the "Albert Gallatin Lock and Dam"; to the Committee on Environment and Public Works.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE for Mr. KARNES (for himself and Mr. GRASSLEY):

S. Res. 484. A resolution to ensure corn gluten exports to the European Community; to the Committee on Finance.

By Mr. DOLE (for himself, Mr. ADAMS,

Mr. ARMSTRONG, Mr. BAUCUS, Mr. BENTSEN, Mr. BIDEN, Mr. BINGAMAN, Mr. BOND, Mr. BOREN, Mr. BOSCHWITZ, Mr. BRADLEY, Mr. BREAUX, Mr. BUMPERS, Mr. BURDICK, Mr. CHAFEE, Mr. CHILES, Mr. COCHRAN, Mr. COHEN, Mr. CONRAD, Mr. CRANSTON, Mr. D'AMATO, Mr. DANFORTH, Mr. DASCHLE, Mr. DECONCINI, Mr. DIXON, Mr. DODD, Mr. DOMENICI, Mr. DURENBERGER, Mr. EVANS, Mr. EXON, Mr. FORD, Mr. FOWLER, Mr. GARN, Mr. GLENN, Mr. GORE, Mr. GRAHAM, Mr. GRAMM, Mr. GRASSLEY, Mr. HARKIN, Mr. HATCH, Mr. HATFIELD, Mr. HECHT, Mr. HEFLIN, Mr. HEINZ, Mr. HELMS, Mr. HOLLINGS, Mr. HUMPHREY, Mr. INOUE, Mr. JOHNSTON, Mr. KARNES, Mrs. KASSEBAUM, Mr. KASTEN, Mr. KENNEDY, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LUGAR, Mr. MATSUNAGA, Mr. MCCAIN, Mr. MCCLURE, Mr. MCCONNELL, Mr. MELCHER, Mr. METZENBAUM, Ms. MIKULSKI, Mr. MITCHELL, Mr. MOYNIHAN, Mr. MURKOWSKI, Mr. NICKLES, Mr. NUNN, Mr. PACKWOOD, Mr. PELL, Mr. PRESSLER, Mr. PROXMIRE, Mr. PRYOR, Mr. QUAYLE, Mr. REID, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. ROTH, Mr. RUDMAN, Mr. SANFORD, Mr. SARBANES, Mr. SASSER, Mr. SHELBY, Mr. SIMON, Mr. SIMPSON, Mr. SPECTER, Mr. STAFFORD, Mr. STENNIS, Mr. STEVENS, Mr. SYMMS, Mr. THURMOND, Mr. TRIBLE,

Mr. WALLOP, Mr. WARNER, Mr. WEICKER, Mr. WILSON, and Mr. WIRTH):

S. Res. 485. A resolution commending Robert C. Byrd for his exemplary service to the United States Senate, the Congress, and the people of the United States; considered and agreed to.

By Mr. BYRD (for Mr. HOLLINGS (for himself, Mr. RIEGLE, Mr. DANFORTH, Mr. PRESSLER, Mr. WIRTH, Mr. FORD, and Mr. GARN)):

S. Res. 486. A resolution to congratulate the crew of the space shuttle Discovery on the successful completion of its mission; considered and agreed to.

By Mr. BOSCHWITZ:

S. Con. Res. 150. A concurrent resolution concerning human rights of the Sikhs in the Punjab of India; to the Committee on Foreign Relations.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NUNN (for himself, Mr.

BYRD, Mr. DOLE, Mr. MOYNIHAN, Mr. RUDMAN, Mr. D'AMATO, Mr. WILSON, Mr. GRAMM, Mr. FOWLER, Mr. BUMPERS, Mr. MURKOWSKI, Mr. TRIBLE, Mr. THURMOND, Mr. GRAHAM, Mr. LAUTENBERG, Mr. CHILES, Mr. DECONCINI, Mr. DIXON, Mr. BENTSEN, Mr. BINGAMAN, Mr. EXON, Mr. SASSER, Mr. ROTH, Mr. RIEGLE, Mr. BREAUX, Mr. SPECTER, Mr. CONRAD, Mr. GORE, Mr. DASCHLE, Mr. HOLLINGS, Mr. METZENBAUM, Mr. QUAYLE, Mr. BOSCHWITZ, Mr. CHAFEE, Mr. COCHRAN, Mr. DOMENICI, Mr. GRASSLEY, Mr. HATCH, Mr. HECHT, Mr. HEINZ, Mr. KARNES, Mr. MCCONNELL, Mr. PACKWOOD, Mr. PRESSLER, Mr. SIMPSON, and Mr. STEVENS):

S. 2852. A bill to provide for an omnibus Federal, State, and local effort against substance abuse, to provide for a cabinet-level position to centralize and streamline Federal activities with respect to both drug supply—interdiction and law enforcement—and drug demand—(prevention, education, and treatment)—to expand Federal support to ensure a long-term commitment of resources and personnel for substance abuse education, treatment, and rehabilitation efforts, to strengthen improve the enforcement of Federal drug laws and enhance the interdiction of illicit drug shipments, and for other purposes; placed on the calendar.

Statements on the introduction of this legislation and a section-by-section analysis of the bill appear elsewhere in today's RECORD. The text of the bill is as follows:

S. 2852

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Omnibus Anti-Substance Abuse Act of 1988".

## SEC. 2. ORGANIZATION OF ACT.

The organization of this Act is as follows:

October 3, 1988

## CONGRESSIONAL RECORD — SENATE

S14067

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 485) was unanimously agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

## S. RES. 485

Whereas the close of the 100th Congress represents the completion of the service of Robert C. Byrd as Majority Leader of the United States Senate; and

Whereas he has performed the duties of Majority Leader with diligence, grace, and consummate patience, thereby facilitating the important business of the Senate; and

Whereas Robert C. Byrd has demonstrated not only a mastery of the rules and procedures of the Senate, which he has used to promote the orderly debate and resolution of the complex public policy issues confronting our Nation, but also an unparalleled knowledge and appreciation of the history of the United States Senate and its role in our democracy; and

Whereas throughout his service in the Senate he has vigilantly defended the Constitutional prerogatives of the Congress; and

Whereas his efforts to work with the Speaker and other leaders of the House of Representatives has established a new level of cooperation and coordination between the two Houses; and

Whereas Robert C. Byrd has had a long and distinguished record of public service to the people of West Virginia and the United States, having held more elective offices than any other individual in the history of West Virginia, being the only West Virginian to have served in both Houses of the State legislature and in both Houses of the United States Congress, and having served in the leadership of the Senate for the past 21 years; and

Whereas in the long tradition of Leadership of the United States Senate, the service by Robert C. Byrd to the Senate, the Congress, and the Nation will stand as a benchmark for future leaders; and

Whereas the respect, trust, and confidence which his colleagues feel toward Robert C. Byrd is a testament to the integrity, humanity, and good will which he displays to all around him; Now therefore, be it Resolved,

That the Senate of the United States expresses its deep appreciation to Robert C. Byrd for his dedication to the ideals of representative democracy and for his outstanding service to the United States and its citizens.

UNANIMOUS CONSENT  
AGREEMENT—RULE XXII

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I ask unanimous consent that Senators MOYNIHAN and NUNN and RUDMAN and D'AMATO and WILSON and GRAM and any other Senators who are cosponsors of the bipartisan drug bill that is about to be introduced may be recognized for the introduction of that measure and may speak on it, notwithstanding rule XXII, but that the time be charged against the 30 hours under cloture.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Georgia [Mr. NUNN].

OMNIBUS ANTI-SUBSTANCE  
ABUSE ACT OF 1988

Mr. NUNN. Mr. President, on behalf of Senator BYRD, Senator DOLE, myself, Senator MOYNIHAN, Senator RUDMAN, Senator D'AMATO, Senator WILSON, Senator GRAMM, and numerous others on both sides of the aisle, I send a comprehensive drug bill to the desk, together with a section-by-section analysis, and ask that the matter be printed and ask that the bill be reported.

Mr. President, I will just introduce the bill at this point.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

There being no objection, the section-by-section analysis was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION OF THE NATIONAL  
NARCOTICS LEADERSHIP ACT  
SUBTITLE I OF TITLE I

Sec. 1001. Short Title.—This section sets forth that this title may be cited as the "National Narcotics Leadership Act of 1988."

Sec. 1002. Findings.—This section sets forth findings that highlight the scope of the drug problem; the need for maximum coordination and leadership among all levels of government and the private sector in fighting drug trafficking and abuse; the fact that past efforts—particularly federal efforts—have been hampered by lack of coordination, leadership, and long-range plan; the necessity of placing one Cabinet-level official in charge of the entire federal drug control program; and that said official must have the authority to develop and implement, in consultation with appropriate agency heads and outside experts, a research-based long-range national anti-drug strategy with the complete support and backing of the President.

Sec. 1003. Purposes.—This section sets forth the purposes of this Title. While the purposes are, for the most part, self explanatory, several points deserve attention. First, the Director for National Drug Control Policy must report directly to the President on drug control matters. The Director will be required to make difficult budget and policy decisions that may require agencies to undertake extensive revisions in their current drug policy. It is absolutely essential that the Director have the complete confidence and support of the President if he is to make these difficult budget and policy decisions. The second point is that this official must be accountable to Congress and—ultimately—to the American people. At this time, the Attorney General, as chairman of the National Drug Policy Board, is not available to come before Congress on a regular basis to discuss drug control efforts. And the Vice Chairman of the Policy Board, the Secretary of Health and Human Services, has never testified before Congress solely on the drug issue. The Director and the Deputy Directors must be available to consult with Congress on a frequent basis, testifying before appropriate Committees, and presenting the federal government's unified strategy on drug control. The Director must also be honest and candid in discussing the drug issue. Drug abuse in America will not go away overnight; it will take years, if not decades, to change attitudes and decrease drug use. To

sustain public support for the national anti-drug strategy, the Director must be honest and frank about our successes and failures, and about what it will take—and how long—to decrease drug abuse. Finally, any national effort must contain a coordinated strategy between agencies at the federal, state and local levels. With so much of the responsibility for drug control falling within the jurisdiction of state and local governments, the national strategy must take into account the role that such governments play in drug control.

Sec. 1004. Definitions.—This section sets forth the definitions of six terms as used in this title. In general, the terms have been worded broadly to ensure that all efforts to reduce the supply of and demand for drugs are included in the jurisdiction of the Director of National Drug Control Policy. Any interpretation of such definitions should give deference to this broad interpretation. In addition, the term "drug" means the same as the term "controlled substance" as defined in the Controlled Substances Act. As a result, the Director's jurisdiction does not extend to alcohol abuse programs and thus nothing in this Title shall be construed to reduce the priority of alcohol abuse programs in the federal government. It is the intent of this Title, however, that alcohol and drug programs should be fully coordinated, particularly with respect to drug and alcohol abuse education, prevention and treatment programs.

Sec. 1005. Establishment of Office: (a) Establishment of Office.—This subsection establishes an Office of National Drug Control Policy within the Executive Office of the President. The Office has been placed in the Executive Office of the President to ensure that the Office receives a top priority within the executive branch. Such placement is consistent with the Director's authority and responsibility to report directly to the President on drug control matters.

(b) Director and Deputy Directors.—This subsection creates a Director to head the Office and two deputy Directors, one for drug demand reduction and the other for drug supply reduction, to assist the Director. In addition, the deputy directors may be assigned such other responsibilities under this Title as the Director may require.

(c) Bureau of State and Local Affairs.—This subsection creates a Bureau of State and Local Affairs within the Office of the Director to be headed by an Associate Director. The Associate director should report directly to the Director. This office should provide high-level attention within the Office to the needs and views of state and local drug control officials, particularly in preparing the state and local component of the National Drug Control Strategy.

Sec. 1006. Appointment and Duties of the Director, Deputy Directors and Associate, Director: (a) Appointment.—This section provides that the Director, the Deputy Directors and the Associate director shall be appointed by the President, by and with the advice and consent of the Senate. This section further provides that these officials serve at the pleasure of the President and that no person shall serve as Director, Deputy Director or Associate Director for a period of more than four years unless they are reappointed by the President and reconfirmed by the Senate. The latter provision allows for greater accountability on the part of the Director, the Deputy Directors and the Associate Director to the President and Congress. Finally, the Director, Deputy Directors and the Associate Director are prohibited from serving in any other position in the federal government. For example, the President could not appoint a sitting Attor-